IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 2600 OF 2005
With
CIVIL APPLICATION NOS.8376 OF 2005 AND 8836 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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NITIN PRANLAL SONI & ORS. - Appellant(s)

Versus

PADMABEN PRANLAL SONI WD/O PRANLAL GOPALJI SONI - Respondent(s)

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Appearance :
MR. KIRTIDEV R. DAVE for Appellant(s) : 1 - 3.
MR. PREMAL JOSHI for MR. SAMIR U. SHAH for Respondent(s).
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 04/10/2005

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Admit.

Mr.Premal Joshi, learned Counsel, appears and waives service of notice of admission on behalf of the respondent.

With the consent of the parties, the matter is heard.

2. Mr.Premal Joshi, learned Counsel, appears on behalf of Mr.Sameer U. Shah and submits that the order passed by the Court below may be set aside and the matter may be remitted back to the trial Court for its disposal in accordance with law, especially, in light of the provisions of the Hindu Succession Act, 1956 in case of death of a person, who dies intestate.

3. In view of the submission made by the respondent, the order passed by the learned Court below is set aside. During the pendency of this matter, a Succession Certificate has already been issued on submission of the stamps in favour of the respondent. As we are remitting the matter back to the learned trial Court for its trial afresh, we direct the respondent to surrender the said Succession Certificate. On submission of the Succession Certificate, the trial Court shall cancel the same, however, shall issue necessary orders for refund of the stamp duty/Court fees in favour of the respondent.

4. The appeal is allowed. The parties present in the Court shall appear before the trial Court on 25th October, 2005. Let a copy of this order be sent by the High Court

Registry to the learned trial Court enabling it to understand as to what it is required to do. No costs.

5. In view of the final disposal of the First Appeal, no orders are needed on Civil Application Nos.8836 of 2005 and 8376 of 2005.

[***R.S.Garg, J.***]

[***K.M. Mehta, J.***]

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